Court File No.: A-362-10

FEDERAL COURT OF APPEAL

BETWEEN:

NELL TOUSSAINT

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN CIVIL LIBERTIES ASSOCIATION

Intervenor

MEMORANDUM OF FACT AND LAW OF THE INTERVENOR, THE CANADIAN CIVIL LIBERTIES ASSOCIATION

November 19, 2010

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FEDERAL COURT OF APPEAL

BETWEEN:

NELL TOUSSAINT

Appellant

- and -

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MEMORANDUM OF FACT AND LAW OF THE INTERVENOR, THE CANADIAN CIVIL LIBERTIES ASSOCIATION

PART I: STATEMENT OF FACT

a) Overview

1. Since Order-In-Council P.C. 157-11/848 (the "Order-In-Council") was signed in 1957, the government of Canada ("Canada") has, for humanitarian reasons, taken responsibility for people in precarious immigration situations by providing them with healthcare coverage. The issue in this case is Canada's refusal to take such responsibility in the context of the Interim Federal Health Program (the "IFHP"). A person living in Canada with precarious immigration status and in need of life-saving healthcare is entitled to it. A refusal to provide it would violate this person's right to equality under section 15 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), infringe her right to life as guaranteed in section 7, and violate Canada's values and international law obligations.

> ***The Canadian Charter of Rights and Freedoms, The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the "*Charter*"), at Tab 30 of the Appellant's Book of Authorities**

b) Facts

2. The Canadian Civil Liberties Association (the "CCLA") was given leave to intervene in this appeal by the order of Justice Nadon dated November 18, 2010.

3. The CCLA relies upon the facts set out by Zinn J. in the court below.

> ***Nell Toussaint v. Attorney General of Canada*, 2010 FC 810 (F.C.) at paras. 5-19, Appeal Book, Vol. 1, Tab 2 ("Federal Court Judgment")**

PART II: POINTS IN ISSUE

4. The CCLA submits that:

(a) The failure of Canada to provide healthcare under the IFHP for those living in Canada with precarious immigration status whose life is at risk, while providing it to the similarly situated, violates the equality rights guaranteed by section 15 of the *Charter*. The discriminatory distinction is made on the basis of immigration status, an analogous ground for the purposes of section 15 of the *Charter*;

(b) The failure of Canada to provide healthcare under the IFHP for those living in Canada with precarious immigration status whose life is at risk violates the right to life under section 7 of the *Charter*; and

(c) The Order-In-Council and sections 7 and 15 of the *Charter* must be interpreted in light of Canada's international obligations.

PART III: SUBMISSIONS

a) A violation of the section 15 right to equality

5. The failure of Canada to provide healthcare under the IFHP for those living in Canada with precarious immigration status whose life is at risk, while providing it to the similarly situated, violates the equality rights guaranteed by section 15 of the *Charter*. The discriminatory distinction is made on the basis of immigration status, an analogous ground for the purposes of section 15 of the *Charter*. In light of the Appellant's extensive submissions on the violation of the section 15 right, the CCLA will be focusing on immigration status as an analogous ground.

Immigration status is an analogous ground under section 15 of the Charter

6. Immigration status is an analogous ground under section 15 of the *Charter*. The courts have rightly recognized that sexual orientation, citizenship and marital status are analogous

grounds. An analogous ground is similar in some important way to the enumerated grounds listed in section 15. As Peter Hogg writes, grounds under section 15 "describe what a person is rather than what a person does...the limitation of section 15 to listed and analogous grounds restricts judicial review to laws that distinguish between individuals on the basis of their inherent attributes as opposed to their behaviour."

> **Peter W. Hogg, *Constitutional Law of Canada*, 5th ed. (Toronto: Thomson Reuters, 2007) vol. 2 at p. 55-22 ("Hogg")**
>
> ***Egan v. Canada*, [1995] 2 S.C.R. 513**
>
> ***Law Society British Columbia v. Andrews,* [1989] 1 S.C.R. 143, Vol. 2, Tab 14 of the Respondent's Book of Authorities ("*Andrews*")**
>
> ***Miron v. Trudel*, [1995] 2 S.C.R. 418 ("*Miron*")**

7. There are several criteria to consider when identifying a ground of distinction as "analogous," though none are necessary for the recognition of an analogous ground. The CCLA submits that the characteristic of immigration status meets the criteria and is an analogous ground.

> ***Corbière v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, at para 60 ("*Corbière*)**
>
> ***Miron*, *supra,* at para. 149**

Immutability

8. First, immigration status is a personal characteristic that is immutable. Immutability does not require permanency, but rather the characteristic at issue must be changeable only with great difficulty or cost to personal identity. La Forest J. in *Andrews,* the case which established citizenship as an analogous ground, recognized that citizenship is a personal characteristic "typically not within the control of the individual, and in this sense, is immutable." Marital status was recognized as an analogous ground in *Miron,* where the majority of the Supreme Court of Canada held that "marital status often lies beyond the individual's effective control." Although in theory an individual may have a choice regarding whether to marry or not, "in practice, however, the reality may be otherwise." (emphasis added).

> **Hogg, *supra,* at pp. 55-22**

***Corbière*, *supra,* at para. 13**

***Andrews*, *supra,* at para. 67**

***Miron*, *supra,* at paras. 153, 154**

9. Similarly, a change of immigration status is not a matter over which an individual exercises "exclusive control." Immigration status is not something an individual can change on his or her own, and it may be determined by factors beyond the individual's control such as the procedure and timing surrounding applications for a change of status, the requirement to pay fees for such a change, and ultimately the approval required from governmental authorities. It is appropriate to describe immigration status as the Supreme Court of Canada has described citizenship status, to say that it is "at least temporarily, a characteristic of personhood not alterable by conscious action..." There is no principled reason that citizenship status or marital status should be considered immutable, but immigration status should not.

***Andrews*, *supra,* at para. 67**

10. Consequently, the CCLA submits that the Ontario Court of Appeal's holding in *Irshad,* that immigration status is not an analogous ground because it is not immutable, should be reconsidered. *Irshad* cannot be reconciled with the decisions to include citizenship and marital status as analogous grounds.

***Irshad (Litigation guardian of) v. Ontario (Ministry of Health)* (2001), 55 O.R. (3d) 43 (Ont. C.A.), at para. 134, Vol. 2, Tab 19 of the Respondent's Book of Authorities**

<u>*Discrimination and disadvantage*</u>

11. Immigration status satisfies the second criterion for establishing an analogous ground, which asks whether the characteristic at issue has been the basis for historical discrimination, and whether those who possess the characteristic are "lacking political power, disadvantaged, or vulnerable to becoming disadvantaged or having their interests overlooked."

Federal Court Judgment, *supra,* at para. 82, note 3

***Corbière*, *supra,* at paras. 13, 60**

***Miron*, *supra,* at para. 152**

12. Immigration status has been the basis for historical discrimination, and non-citizens of all types are vulnerable. Non-citizens, a category which captures many different types of immigration status, have been described by the Supreme Court of Canada in *Andrews* as "a group lacking in political power and as such are vulnerable to having their interests overlooked...". In the Supreme Court of Canada decision in *Lavoie,* Bastarache J. for the majority wrote that "it is settled law that non-citizens suffer from political marginalization, stereotyping and historical disadvantage." All of these points apply equally well to the various types of immigration status within the broader category of non-citizen.

> ***Andrews*, *supra,* at para. 5**
>
> ***Lavoie v. Canada*, 2002 SCC 23, [2002] 1 S.C.R. 769, at paras. 45, 103 ("*Lavoie*"), at Tab 22 of the Appellant's Book of Authorities**

Of fundamental importance

13. Immigration status is fundamental and an important aspect of an individual's identity. As the court in *Miron* wrote, the question is whether the characteristic at issue is "not a matter which should be excluded from *Charter* consideration on the ground that its recognition would trivialize the equality guarantee" and is of defining importance to an individual (emphasis added).

> ***Miron*, *supra,* at para. 151**
>
> ***Corbière*, *supra,* at para. 60**

14. The recognition that immigration status is an analogous ground is essential to capturing the reality of the modern immigration landscape in which people of differing, non-citizen immigration status are subject to countless distinctions in treatment. Just as non-citizens can be disadvantaged with respect to citizens, an individual possessing one non-citizen immigration status may be disadvantaged with respect to an individual possessing another non-citizen immigration status.

15. The recognition of an analogous ground identifies a "suspect marker" of discriminatory treatment, or a "type of decision making that is suspect because it often leads to discrimination and denial of substantive equality." A review of some of the distinctions made on the basis of immigration status illustrates the defining importance that demarcations based on this

characteristic – and their resulting disadvantages – hold for many individuals in Canadian society.

> ***Corbière, supra*, at paras. 8, 11**
>
> ***Lavoie, supra*, at para. 41**

16. For instance, certain benefits, such as benefits for self-employed persons, are available to permanent residents but not to convention refugees. In this case, refugee claimants, among others, have access to healthcare under the IFHP, whereas other individuals with precarious immigration status do not. These disadvantages are not visible through the broader comparison between citizen and non-citizen, and only become visible through comparison between more specific groups of non-citizens. Government has the power to create distinctions among individuals on the basis of immigration status, but these "distinctions should not bring about or reinforce the disadvantage of certain groups by denying them the rights freely accorded to others".

> ***Employment Insurance Act,* S.C. 1996, c. 23, s. 152.02 ("*Employment Insurance Act")***
>
> ***Andrews*, *supra,* at para. 5 in the context of the citizen and non-citizen distinction, but this quote is apt for the examination of the distinction between different types of immigration status**

17. Including immigration status does not "trivialize the equality guarantee." On the contrary, not including immigration status leads to that trivialization, given the Canadian immigration landscape and the proliferation of non-citizen immigration categories. The recognition that immigration status is an analogous ground enables the protection of equality and advances the "central concern of section 15" – "combating discrimination, defined in terms of perpetuating disadvantage and stereotyping."

> ***Miron*, *supra,* at para. 151**
>
> ***R. v. Kapp*, 2008 SCC 41, [2008] 2 S.C.R. 483, at para. 24, at Tab 17 of the Appellant's Book of Authorities**

18. In addition to fitting neatly within the criteria discussed above, the Ontario Court of Appeal and the Federal Court appear to have already based decisions on immigration status as an analogous ground, or as a subset of the analogous ground of citizenship status. In *Jaballah,* the

Federal Court found that the differential treatment of the Applicant, a foreign national, as compared to a permanent resident in the same situation, was discriminatory and a violation of the Applicant's section 15 rights under the *Charter.* The Court found that the Applicant's loss of equal protection and equal benefit of the law was "solely on the basis of his immigration status."

> ***Jaballah (Re)*, 2006 FC 115, [2006] F.C.R. 193 (F.C.) at paras. 80-81, at Tab 22 of the Appellant's Book of Authorities**
>
> **See also *R. v. Church of Scientology of Toronto,* [1997] O.J. No. 1548 (Ont. C.A.) at para. 125, at Tab 23 of the Appellant's Book of Authorities**

b) <u>The violation of the section 7 *Charter* right to life</u>

<u>Deprivation of the right to life</u>

19. The right to life is central to all *Charter* guarantees: without it, enjoyment of any other human right or civil liberty becomes impossible. In *Gosselin v. Quebec (Attorney General)*, Arbour J. explained that the right to life is a "... prerequisite – a *sine qua non* – for the very possibility of enjoying all the other rights guaranteed by the *Charter*".

> ***Gosselin v Quebec (Attorney General)*, [2002] 4 S.C.R. 429, at para 346, per Arbour J., Vol. 3, Tab 23 of the Respondent's Book of Authorities. While Arbour J. dissented on the issue of section 7, the majority did not contradict, or address, the centrality of the right to life**
>
> ***R. v. Malmo; R. v. Caine*, [2003] 3 S.C.R. 571, at para 231, at Tab 10 of the Appellant's Book of Authorities**
>
> ***Reference re Motor Vehicle Act (British Columbia)* S 94(2), [1985] 2 S.C.R. 486, at para. 57**
>
> **The centrality of the right to life has also been acknowledged internationally, and has been declared by the United Nations Human Rights Committee as the "most fundamental" of all rights enshrined in the *International Covenant on Civil and Political Rights*. See *Mrs. G. T. v. Australia*, Communication No. 706/1996, UN Doc. CCPR/C/61/D/706/1996, Report of the Human Rights Committee, UN GAOR, 53d Sess., Supp. No. 40, UN Doc. A/53/40, vol. 2 (1998) annex XI.U (views adopted 4 November 1997), reprinted in (1998) 5 I.H.R.R. 737, at para. 8.1**

20. The right to life is an essential component of civil liberties in Canada. It is a clear violation of this right to refuse a person living in Canada with precarious immigration status the healthcare she needs because of a life-threatening medical situation.

Deprivation of the right to life not in accordance with the principles of fundamental justice

21. Zinn J. found that the Appellant established that her exclusion from the IFHP resulted in a deprivation of her right to life, liberty and security. However, he also found that there had not been a violation of the Appellant's section 7 rights under the *Charter* because the deprivation was in accordance with the principles of fundamental justice.

Federal Court Judgment, *supra,* at paras. 91 and 94

22. The CCLA respectfully submits that the deprivation of the right to life through the limit placed on access to life-saving healthcare under the IFHP is not in accordance with the principles of fundamental justice.

The Order-In-Council includes persons living in Canada with precarious immigration status who are in life-threatening medical situations

23. The Order-In-Council must be interpreted in light of sections 7 and 15 of the *Charter* and Canada's international obligations. An interpretation that properly does so would permit an individual living in Canada with precarious immigration status to access life-saving healthcare. In the context of section 7, the Supreme Court of Canada has held that there is a "...presumption that legislation is enacted to comply with constitutional norms, including the rights and freedoms enshrined in the *Charter*". Moreover, as the majority of the Supreme Court of Canada held in *Zundel,* "...where a legislative provision ... is subject to two equally persuasive interpretations, the Court should adopt that interpretation which accords with the *Charter* and the values to which it gives expression ...".

***Application under s. 83.28 of the Criminal Code (Re)*, [2004] 2 S.C.R. 248, at para. 35**

***R. v. Zundel*, [1992] 2 S.C.R. 731, at para 59**

***R. v. Sharpe*, [2001] 1 S.C.R. 45, at para 33, on the presumption "that Parliament intended to enact legislation in conformity with the *Charter*..."**

***Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513, at para. 93, at Tab 4 of the Appellants Book of Authorities: "values embodied in the *Charter* must be given preference over an interpretation which would run contrary to them"**

Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis Canada Inc., (2008) at 458-466

24. One of the issues on appeal is whether a person living in Canada with precarious immigration status and in a life-threatening medical situation is someone subject to "immigration jurisdiction" for the purposes of entitlement to health care. The CCLA answers this in the affirmative but, in the alternative, further submits that such a person also fits within the terms of the Order-In-Council as someone "for whom the Immigration authorities feel responsible and who has been referred for examination and/or treatment by an authorized Immigration officer." The government is responsible for a person like the Appellant: her life-threatening medical situation is known to the immigration authorities, and the Order-In-Council must be interpreted to admit responsibility in these circumstances.

Federal Court Judgment, *supra,* at para. 36

25. The Report to the Treasury Board by the Minister of National Health and Welfare and the Minister of Health, dated March 29, 1957 (the "Report"), supports the submission that the Order-In-Council should be interpreted broadly and inclusively. The sixth recital of the Report specifies that the Order-In-Council should be used "…when humane interests more or less obligate the Departments to accept the responsibility" for the persons in question. Humane interests, which prompted the policy of assistance manifest in the Order-In-Council and its predecessors, dictate the provision of life-saving healthcare to a person living in Canada with precarious immigration status and without the means to pay for treatment. Such a person is entitled to life-saving healthcare. At first instance, Zinn J. established as fact that if the Appellant did not receive timely and appropriate healthcare in the future, she would be at a very high risk of immediate death.

Report to Treasury Board from the Minister of National Health and Welfare, dated 29 March 1957, Appeal Book, Vol. 2, Tab 11, Exhibit E, at pp. 543-544

Federal Court Judgment, *supra,* at paras. 44, 91

Appellant's Memorandum of Fact and Law, at paras. 20-28

The limit placed on the Order-In-Council by the IFHP is arbitrary

26. Based on the above and the wording of the Order-In-Council itself, it can be extrapolated that the goal or objective of the Order-In-Council is humanitarian in nature and is to provide healthcare to those in need who, by virtue of their precarious immigration status and financial

circumstances, may otherwise be left without care. Canada is not entitled to arbitrarily limit the right to life, liberty and security of the person. As the Supreme Court of Canada held in *Chaoulli*, "a law is arbitrary where 'it bears no relation to, or is inconsistent with, the objective that lies behind [it]'". A limit is "impermissibly arbitrary" if it lacks a "real connection on the facts" to the purpose or goal of the legislation at issue.

> ***Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 S.C.R. 791, at paras. 129 – 133, at Tab 9 of the Appellant's Book of Authorities**
>
> **See also Hogg, *supra,* at pp. 47-58 and 47-59**

27. Despite the breadth of the Order-In-Council, the IFHP (the program that implements the policy mandate contained in the Order-In-Council) is currently operating to provide coverage to certain non-citizens with precarious immigration status (refugee claimants, resettled refugees, persons detained under the *Immigration and Refugee Protection Act* and victims of trafficking in persons), but not to others, even when they are living in Canada in life-threatening medical situations. This limit bears no relation to the goal of the Order-In-Council and is therefore arbitrary.

> **Federal Court Judgment, *supra,* at para. 19**
>
> **IFHP decision from Citizenship and Immigration Canada, dated July 10, 2009, Appeal Book, Vol. 1, Tab 4, at pp. 60-61**
>
> ***Immigration and Refugee Protection Act,* S.C. 2001, c. 27 ("IRPA")**

28. The arbitrariness of this limit on the IFHP is especially evident when the situation of those who receive coverage is contrasted with the situation of those who do not. Although precarious immigration status due to the risk of immediate or imminent deportation is an underlying characteristic of those covered, others with similarly precarious immigration status are excluded from coverage.

29. Significantly, Zinn J. erred in holding that there is "nothing arbitrary in denying financial coverage for health care to persons who have chosen to enter and remain in Canada illegally", and that the limit imposed on the Order-In-Council by the IHFP was therefore constitutional. The Order-In-Council does not in any way state or imply that choice or legality are relevant criteria in determining who is entitled to healthcare.

Federal Court Judgment, *supra,* at para. 94

i) Current IFHP recipients have precarious status

30. The immigration status of refugee claimants, resettled refugees, individuals detained under the IRPA, and victims of trafficking is inherently precarious, in particular because most face the threat of immediate or imminent deportation. The "involuntary repatriation", or deportation, after discovery and detention of victims of trafficking is a real possibility. Refugee claimants have limited means to gain legal status in Canada and face the danger of deportation when a claim is deemed ineligible. Those detained under the IRPA may be so detained for a variety of reasons, but many are at risk of deportation because they have been deemed inadmissible, or are awaiting determination of their admissibility. Other individuals with precarious immigration status, like the Appellant, face a similar threat of deportation, after a finding of inadmissibility and the issuance of a removal order.

IRPA, ss. 29(2), 33-48 , 49(2), 55

31. It is arbitrary to include some individuals living in Canada with precarious immigration status in the IFHP, while excluding others.

ii) Illegality is not a basis for denying coverage under the IFHP

32. With respect, Zinn J.'s conclusion that the IFHP's purpose is to provide temporary healthcare to legal migrants is not correct. An individual whose temporary status has expired but who chooses to remain in Canada does so contrary to section 29(2) of the IRPA. Such an individual may still make a claim for refugee status inside Canada, as long as he or she is not subject to a removal order or otherwise ineligible.

IRPA, at ss. 99(3), 101

33. Furthermore, the IFHP provides healthcare coverage to those detained under the IRPA, even if these individuals are in Canada illegally. It makes little logical sense to deny someone access to healthcare under the IFHP on grounds of illegality, when such coverage is available to others here illegally (such as an individual who remained in Canada after loss of temporary status, was deemed inadmissible, and detained).

IRPA, at ss. 29(2), 41 and 55

iii) "Choice" is not a basis for denying coverage under the IFHP

34. In his decision, Zinn J. contrasted the situation of the Appellant to that of victims of human trafficking, and characterized the Appellant as an illegal migrant who was "here by choice" and so not entitled to healthcare under the IFHP. The CCLA respectfully submits that this reasoning is misguided for two reasons. First, the Order-In-Council does not in any way state or imply that "choice" is a relevant criterion in determining who is entitled to healthcare.

Federal Court Judgment, *supra,* at para. 93

35. Second, even if the Order-In-Council could be interpreted as only available to those not in Canada by choice, to hold that those with precarious immigration status simply choose to remain in Canada is to miscomprehend the reality faced by these individuals. As submitted above in the context of section 15 of the *Charter*, immigration status is not "typically within the control of the individual" any more than citizenship status is.

***Andrews, supra*, at para. 67**

c) <u>The Order-In-Council and sections 7 and 15 of the *Charter* must be interpreted in light of Canada's international obligations</u>

36. The Order-In-Council, as well as the rights guaranteed in sections 7 and 15 of the *Charter,* must be read in light of Canada's international obligations. Such obligations include the *Convention on the Rights of Persons with Disabilities,* ratified by Canada on March 11, 2010, which affirms the inherent right to life of every human being, and affirms that State Parties must "take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others," and the *International Covenant on Civil and Political Rights,* signed by Canada on May 19, 1976, which guarantees all persons equal and effective protection from discrimination.

UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution* / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at: http://www.unhcr.org/refworld/docid/45f973632.html [accessed 17 November 2010] at article 10

UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: http://www.unhcr.org/refworld/docid/3ae6b3aa0.html >, at article 26, at Tab 31 of the Appellant's Book of Authorities

37. It has been well established that domestic law, as well as the principles of fundamental justice, must be interpreted in light of the values and obligations expressed in the international instruments by which Canada is bound. Accordingly, the CCLA submits that Zinn J. erred in not properly considering the impact of Canada's international obligations on the application of the Order-In-Council and sections 7 and 15 to this case "because Canada has not expressly implemented them." In light of the Appellant's extensive arguments on Canada's international obligations, the CCLA will not expand further on this issue.

> ***Baker v. Canada (Minister of Citizenship and Immigration)*** **[1999] 2 S.C.R. 814, at para. 70, at Tab 6 of the Appellant's Book of Authorities**
>
> ***de Guzman v. Canada (Minister of Citizenship and Immigration)*** **[2006] 3 F.C.R. 655 (F.C.A.), at para. 62, Vol. 1, Tab 8 of the Respondent's Book of Authorities**
>
> ***Canada (Prime Minister) v. Khadr*** **2010 SCC 3, [2010] 1 S.C.R. 44, at para. 23, at Tab 16 of the Appellant's Book of Authorities**
>
> **Federal Court Judgment, *supra,* at para. 70**

PART IV: ORDER SOUGHT

38. The CCLA requests that this Court make an order in accordance with the above principles.

All of which is respectfully submitted,

November 19, 2010

Iris Fischer

Lindsay Aagaard

Solicitors for the Canadian Civil Liberties Association

PART V: AUTHORITIES

Case Law

1. *Corbière v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203
2. *Egan v. Canada*, [1995] 2 S.C.R. 513
3. *Law Society British Columbia v. Andrews,* [1989] 1 S.C.R. 143
4. *Miron v. Trudel*, [1995] 2 S.C.R. 418
5. *Irshad (Litigation guardian of) v. Ontario (Ministry of Health)* (2001), 55 O.R. (3d) 43 (Ont. C.A.)
6. *Lavoie v. Canada*, 2002 SCC 23, [2002] 1 S.C.R. 769
7. *R. v. Kapp*, 2008 SCC 41, [2008] 2 S.C.R. 483
8. *Jaballah (Re)*, 2006 FC 115, [2006] F.C.R. 193 (F.C.)
9. *R. v. Church of Scientology of Toronto,* [1997] O.J. No. 1548 (Ont. C.A.)
10. *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84, [2002] 4 S.C.R. 429
11. *R. v. Malmo; R. v. Caine*, [2003] 3 S.C.R. 571
12. *Reference re Motor Vehicle Act (British Columbia)* S 94(2), [1985] 2 S.C.R. 486
13. *Application under s. 83.28 of the Criminal Code (Re)*, [2004] 2 S.C.R. 248
14. *R. v. Zundel*, [1992] 2 S.C.R. 731
15. *R. v. Sharpe*, [2001] 1 S.C.R. 45
16. *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513
17. *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 S.C.R. 791
18. *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 814
19. *de Guzman v. Canada (Minister of Citizenship and Immigration),* [2006] 3 F.C.R. 655 (F.C.A.)
20. *Canada (Prime Minister) v. Khadr,* 2010 SCC 3, [2010] 1 S.C.R. 44

Statutes and Regulations

21. *The Canadian Charter of Rights and Freedoms, The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, ss 7 and 15

22. *Employment Insurance Act,* S.C. 1996, c. 23, s. 152.02

23. *Immigration and Refugee Protection Act,* S.C. 2001, c. 27, ss. 29(2), 33-48 , 49(2), 55, 99(3), 101

Other Authorities

24. Hogg, Peter W., *Constitutional Law of Canada*, 5th ed (Toronto: Thomson Reuters, 2007) vol. 2, at pp. 47-58, 47-59, 55-22

25. *Mrs. G. T. v. Australia*, Communication No. 706/1996, UN Doc. CCPR/C/61/D/706/1996, Report of the Human Rights Committee, UN GAOR, 53d Sess., Supp. No. 40, UN Doc. A/53/40, vol. 2 (1998) annex XI.U (views adopted 4 November 1997), reprinted in (1998) 5 I.H.R.R. 737

26. Sullivan, Ruth, *Sullivan on the Construction of Statutes*, 5th ed (Markham: LexisNexis Canada In., (2008) at 458-466

27. United Nations General Assembly, *Convention on the Rights of Persons with Disabilities: resolution* / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at: http://www.unhcr.org/refworld/docid/45f973632.html [accessed 17 November 2010] at article 10

28. United Nations General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: http://www.unhcr.org/refworld/docid/3ae6b3aa0.html >, at article 26

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MEMORANDUM OF FACT AND LAW OF THE INTERVENOR, THE CANADIAN CIVIL LIBERTIES ASSOCIATION

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